

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Local 58, International Brotherhood
of Electrical Workers,
Petitioner,

v.

Case Nos. 17-1058 and 17-1108
(Consolidated)

National Labor Relations Board,
Respondent,

and

Ryan Greene,
Intervenor.

INTERVENOR’S MOTION FOR AWARD OF COSTS

Pursuant to D.C. Circuit Rule 39(c), Intervenor Ryan Greene hereby moves for an award of costs.

ARGUMENT IN SUPPORT

On May 8, 2018, this Court unanimously denied Local 58, International Brotherhood of Electrical Workers’ (“Local 58”) Petition for Review, and simultaneously granted the National Labor Relations Board’s (“NLRB”) Application for Enforcement. Judgment, ECF No. 1729840. This Court issued a published opinion enforcing the NLRB’s decision, which held facially invalid Local 58’s policy requiring employees to appear in person at Local 58’s office

with photo identification in order to resign their memberships and/or revoke their dues check-off authorizations. ___ F.3d ___, 2018 WL 2106861 (May 8, 2018).

Intervenor Ryan Greene initiated the underlying NLRB litigation giving rise to Local 58's Petition for Review. NLRB Case No. 07-CB-149555; 365 NLRB No. 30 (Feb. 10, 2017). By, and through, his undersigned counsel, who were provided *pro bono* by the National Right to Work Legal Defense Foundation, Inc., Mr. Greene actively participated at every stage of this case.¹ He filed the sole unfair labor practice charge against Local 58 initiating the case (Joint Appendix ("JA") 110); actively participated at the Administrative Law Judge's ("ALJ") hearing (*see, e.g.*, JA 17–18, 30–31, 50–59, 64–67); filed his own separate exceptions to the NLRB from the ALJ's ruling (JA 84 et seq.; 365 NLRB No. 30); and then successfully intervened in this Court to protect his NLRB victory striking down Local 58's policy unlawfully restricting resignations and revocations. (Ryan Greene's Motion to Intervene, ECF No. 1662842 (Feb. 24, 2017); Order, ECF No. 1671029 (Apr. 13, 2017) (granting motion to intervene)).

¹ The National Right to Work Legal Defense Foundation, Inc., is a charitable, IRS-approved legal aid organization, which provides free legal aid to individual employees, like Mr. Greene. *See e.g., United Auto Workers v. Nat'l Right To Work Legal Def. Found., Inc.*, 584 F. Supp. 1219, 1223–24 (D.D.C. 1984), *affirmed*, 781 F.2d 928, 934–35 (D.C. Cir. 1986); *see also Nat'l Right to Work Legal Def. & Educ. Found., Inc. v. United States*, 487 F. Supp. 801, 808 (E.D.N.C. 1979).

Once allowed to intervene in this Court, Mr. Greene filed a timely Intervenor's Brief on July 13, 2017. Br. for Intervenor, ECF No. 1683948. Mr. Greene's brief supported the NLRB in large part, but also provided several different factual and legal arguments the NLRB did not make. *Compare id.* 12–28, *with* NLRB Br. 13–36, ECF No. 1681956. The positions set forth in his Intervenor's Brief were considered by the Court, discussed at oral argument, and can be found interlaced throughout the Court's ruling in his favor. *See* ____ F.3d ____, 2018 WL 2106861.

Given the successful outcome of his case and Mr. Greene's integral role in the litigation and briefing of this matter, he (and his pro bono counsel) seek to recover the admittedly modest costs incurred in filing the brief and prosecuting this appeal. (A copy of his proposed Bill of Costs is attached).

Local Rule 39(c) states, "No taxation of costs for briefs for intervenors . . . will be assessed unless allowed by the court on motion." D.C. Cir. R. 39(c). This Rule has been interpreted to give the Court discretion to order costs to successful intervenors, although "the court is inclined as a matter of allocation of judicial resources to follow the general practice of taxing costs in favor of winning intervenors, without taking the time required to make a more defined determination of additional or incremental contribution." *Am. Pub. Gas Ass'n v.*

Fed. Energy Regulatory Comm’n, 587 F.2d 1089, 1099 (D.C. Cir. 1978). Given this inclination that routine costs should be paid to successful intervenors absent countervailing circumstances, this Court should grant Mr. Greene’s request for such costs where his brief was integral to the case’s proper presentation and his position on the merits prevailed.

Moreover, even if the award of such costs to a successful intervenor is not an automatic or “ironclad rule,” this Court will look at various factors to decide the allocation of costs to successful intervenors. *Delta Air Lines, Inc. v. C. A. B.*, 505 F.2d 386, 388 (D.C. Cir. 1974). “Beyond the obvious initial determination of whether the intervenor was on the winning or losing side, such other factors as the relative merit of the intervenor’s contribution, the novelty of the issues, the necessity of intervention and the public interest, to name a few, may also be relevant considerations in regard to taxation of costs.” *Id.*

The *Delta Air Lines*’ factors weigh in favor of awarding costs to Mr. Greene. His contributions to the outcome of this case, both below and in this Court, are beyond argument. The issues in this case were novel enough to lead the administrative law judge to side with Local 58 and issue an erroneous and ultimately reversed decision (JA 91–97), and to allow NLRB Member Pearce to also issue a dissent this Court refused to follow. (JA 88–91). Mr. Greene’s

persistence in fighting those erroneous decisions is noteworthy. The public interest also supports Mr. Greene's intervention and efforts to achieve justice in this case, *Auto Workers Local 283 v. Scofield*, 382 U.S. 205, 217–22 (1965). Finally, the fact Mr. Greene is represented by attorneys from a non-profit, *pro bono* public interest litigation organization further highlights and supports the need to reimburse him for all of the costs that have been expended to reach this successful outcome.

WHEREFORE, Ryan Greene moves this Court to award him \$73.48 in costs against Local 58, as the successful Intervenor in this case, per the attached Bill of Costs worksheet.

Respectfully submitted,

/s/ Amanda K. Freeman

Amanda K. Freeman

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned certifies that this motion contains 888 words of proportionally spaced, 14-point type, and that the word-processing system used was Microsoft Word 2010.

Respectfully submitted,

/s/ Amanda K. Freeman

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May, 2018, a true and correct copy of the foregoing Motion for Costs was filed with the Court's ECF system, and all current parties have thereby been served.

Respectfully submitted,

/s/ Amanda K. Freeman

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
 Washington, DC 20001-2866
 Phone: 202-216-7000 | Facsimile: 202-219-8530

Local 58, International Brotherhood of Electrical
 Workers, Petitioner,

v.

National Labor Relations Board, Respondent

(Type caption of lead case only)

Appeal No. 17-1058

Consolidated Case Nos.

17-1108

The Clerk is directed to tax costs, pursuant to Fed. R. App. P. 39 and Local Rule 39, for the docketing fee (receivable only by appellant/petitioner), and for the cost of reproducing only the number of copies of briefs and appendices which have been required to be filed with the Court or served on parties, intervenors and amici curiae, plus three copies for the prevailing party. Bills of costs must be filed within fourteen (14) days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

BILL OF COSTS

Comes now Ryan Greene, Intervenor (appellant, petitioner, appellee, or respondent), (the) (a) prevailing party in Appeal Nos. 17-1058 & 17-1108, by counsel, and states that costs have been incurred in said case(s) which should be taxed (solely) (jointly and severally) against the following (party) (parties)

NAME OF PARTY OR PARTIES

APPEAL NO.

(1) Local 58, IBEW

17-1058

(2)

(3)

(4)

(5)

Total # copies of briefs		Pages, Covers or fasteners per brief	=	Total # of pages, covers or fasteners		Fee per page, cover or fastener	=	Subtotal
TEXT:								
11	X	31	=	341	X	\$ 0.10	=	\$ 34.10
COLOR:								
	X		=		X		=	
FRONT COVERS:								
11	X	1	=	11	X	\$ 0.57	=	\$ 6.27
BACK COVERS:								
11	X	1	=	11	X	\$ 0.49	=	\$ 5.39
FASTENERS:								
11	X	1	=	11	X	\$ 2.52	=	\$ 27.72
AMOUNT \$								73.48

REPLY BRIEF (if applicable)

Total # copies of briefs		Pages, Covers or fasteners per brief	=	Total # of pages, covers or fasteners		Fee per page, cover or fastener	=	Subtotal
TEXT:								
	X		=		X		=	
COLOR:								
	X		=		X		=	
FRONT COVERS:								
	X		=		X		=	
BACK COVERS:								
	X		=		X		=	
FASTENERS:								
	X		=		X		=	
AMOUNT \$								

APPENDIX

Total # copies of briefs		Pages, Covers or fasteners per brief	=	Total # of pages, covers or fasteners		Fee per page, cover or fastener	=	Subtotal
TEXT:								
	X		=		X		=	
COLOR:								
	X		=		X		=	
FRONT COVERS:								
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BACK COVERS:								
	X		=		X		=	
FASTENERS:								
	X		=		X		=	
AMOUNT \$								

AMOUNT OF SUBTOTALS \$ 73.48

DOCKETING FEE (if applicable) \$

TOTAL COSTS TO BE TAXED \$ 73.48

It is understood that the Clerk will tax costs only against those parties specifically named herein and in the amount which does not exceed either the specific sum claimed or the total allowable amount determined in accordance with Circuit Rule 39.

The costs claimed as actual costs are the actual costs incurred. A copy of the printer's/duplicator's bill, or other sufficient documentation of actual costs incurred, is attached.

Amanda K. Freeman

Typed Name of Counsel

Amanda K. Freeman
Signature of Counsel

C/o National Right to Work Legal Defense Foundation

Counsel's Address

8001 Braddock Road, Suite 600, Springfield, VA 22160

(703) 321-8510

Counsel's Telephone Number

VERIFICATION *

State of Virginia)
County of Fairfax) SS:

COMES NOW Amanda K. Freeman, and being first duly sworn, does depose and state that (he) (she) signed the foregoing Bill of Costs, that the costs claimed therein were incurred in connection with the captioned appellate proceeding and, as set forth, are true and correct.

SUBSCRIBED AND SWORN TO before the undersigned, a Notary public, this 17th day of May, 20 18.



(Notary seal or stamp)

Sheila B. Watjen

Notary Public

COUNSEL SHALL ATTACH A CERTIFICATE OF SERVICE

*In lieu of this sworn verification, an unsworn declaration in conformity with 28 U.S.C. 1746 may be substituted.